

ANNUAL REPORT

FISCAL YEAR 2008-2009

CAREER SERVICE REVIEW BOARD

STATE OF UTAH



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CAREER SERVICE REVIEW BOARD

STATE OF UTAH

ANNUAL REPORT

FISCAL YEAR 2008-2009

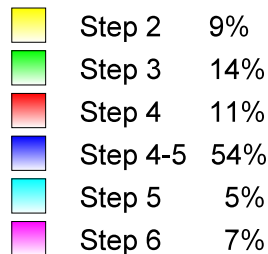
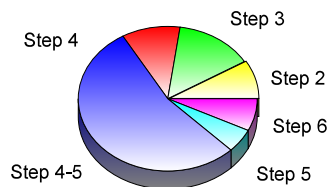
**LEVELS AT WHICH GRIEVANCE CASES
WERE RESOLVED DURING FISCAL YEAR 2008-2009**

LEVELS OF RESOLUTION	GRIEVANCE CASES	NO. OF EMPLOYEES
Step 2 Immediate Supervisor	5	5
Step 3 Agency/Division Director	8	8
Step 4 Department Head	6	6
Mediation Forum (Between Steps 4 & 5)	31	31
*Step 5 Evidentiary Hearing	3	3
**Step 6 Appellate Review by Board	4	4
TOTALS:	57	57

*In addition to the three cases resolved at Step 5 during Fiscal Year 2008-2009, the CSRB held an additional Step 5 hearing that is not reflected in this chart. This additional hearing is not reflected in this chart because the decision was either issued after June 30, 2009, resolved at Step 6 or still on appeal to Step 6. This hearing however, is reflected in the material found at page 10.

** An additional Step 6 hearing was held in the *Grames v. Corrections* case in June 2009. Because the Step 6 decision was not issued until September 2009, it will be captured in next year's annual report as being resolved in Fiscal Year 2009-2010.

LEVELS OF RESOLUTION BY PERCENT



**NUMBER OF APPEALS FROM DISCIPLINARY
PENALTIES AND LEVELS OF RESOLUTION
DURING FISCAL YEAR 2008-2009**

LEVEL	DISCIPLINARY* PENALTIES RESOLVED
Step 2	3
Step 3	5
Step 4	1
Mediation Forum (Between Steps 4 & 5)	21
**Step 5	3
***Step 6	4
TOTAL:	37



***Note:** There are only four disciplinary actions designated by statute: written reprimand, suspension, demotion and dismissal (*Utah Code*, Section 67-19a-302(1)). No other issues qualify as disciplinary actions.

****** In addition, to the three disciplinary cases identified here, there was an additional Step 5 evidentiary hearing held during Fiscal Year 2008-2009, that involved disciplinary matters. This case was appealed to Step 6 of the State's Grievance and Appeal Procedures.

*******There was also an additional Step 6 hearing held during Fiscal Year 2008-2009 that involved a disciplinary issue. That case is not identified here because the Board's decision resolving this case was not issued until September 2009 and thus will be reflected in next year's annual report.

**RESOLUTION ON APPEALS FROM DISCIPLINARY ACTIONS
DURING FISCAL YEAR 2008-2009**

LEVEL	ACTION	NUMBER	DETERMINATION					
			AFFIRMED	MODIFIED	RESCINDED			
Step 2	Reprimand	0	0	0	0			
	Suspension	3	3	0	0			
	Demotion	0	0	0	0			
	Dismissal	0	0	0	0			
Step 3	Reprimand	2	1	1	0			
	Suspension	3	2	0	1			
	Demotion	0	0	0	0			
	Dismissal	0	0	0	0			
Step 4	Reprimand	0	0	0	0			
	Suspension	0	0	0	0			
	Demotion	0	0	0	0			
	Dismissal	1	1	0	0			
Mediation/Jurisdiction Forum	Reprimand	1	1	0	0			
	Suspension	1	1	0	0			
	Demotion	3	2	0	1			
	Dismissal	16	9	7	0			
Step 5	Reprimand	0	0	0	0			
	Suspension	0	0	0	0			
	Demotion	1	1	0	0			
	Dismissal	2	2	0	0			
Step 6	Reprimand	0	0	0	0			
	Suspension	1	1	0	0			
	Demotion	0	0	0	0			
	Dismissal	3	3	0	0			
TOTAL DISCIPLINARY APPEALS:		37	=	27	+	8	+	2

**FREQUENCY DISTRIBUTION OF GRIEVANCE ISSUES
DURING FISCAL YEAR 2007-2008**

ISSUES	OCCURRENCES
Dismissal.	22
Suspension.	8
Promotion.	5
Salary.	5
ASI (2)	
Policy Violation (1)	
Pay Equity (1)	
Contract (1)	
Demotion.	4
Written Reprimand.	3
Administrative Actions.	2
Classification.	2
Performance Evaluation.	2
Transfer.	2

ISSUES	OCCURRENCES
Abandonment of Position.	1
Administrative Actions	1
Co-Worker Complaint.	1
Personnel Rule Violation.	1
Retaliation.	1
Workplace Harassment.	1
Written Warning.	1

TOTAL ISSUES GRIEVED: 61

Note: There were 57 grievance cases resolved; however, some cases had multiple issues grieved. Thus, the overall number of grievance issues resolved (61) exceeds the total number of employees' cases (57) that were resolved.

**GRIEVANCE CASES IDENTIFIED BY DEPARTMENTS
AND LEVELS OF RESOLUTION
DURING FISCAL YEAR 2008-2009**

**ADMINISTRATIVE
SERVICES**

Step 2 - 0
3 - 0
4 - 0
4-5 - 1
5 - 1
6 - 0

CORRECTIONS

Step 2 - 1
3 - 1
4 - 5
4-5 - 13
5 - 0
6 - 3

HEALTH

Step 2 - 0
3 - 2
4 - 0
4-5 - 1
5 - 0
6 - 0

HUMAN SERVICES

Step 2 - 4
3 - 4
4 - 0
4-5 - 4
5 - 2
6 - 0

PUBLIC SAFETY

Step 2 - 0
3 - 1
4 - 0
4-5 - 2
5 - 0
6 - 0

REHABILITATION

Step 2 - 0
3 - 0
4 - 1
4-5 - 2
5 - 0
6 - 0

TAX COMMISSION

Step 2 - 0
3 - 0
4 - 0
4-5 - 1
5 - 0
6 - 0

TECHNOLOGY SERVICES

Step 2 - 0
3 - 0
4 - 0
4-5 - 0
5 - 0
6 - 1

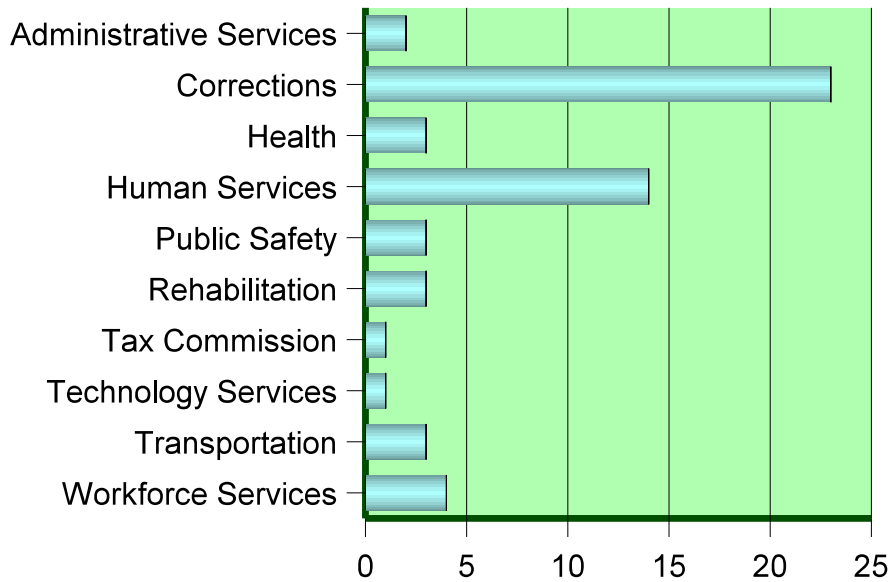
TRANSPORTATION

Step 2 - 0
3 - 0
4 - 0
4-5 - 3
5 - 0
6 - 0

WORKFORCE
SERVICES

Step 2 - 0
3 - 0
4 - 0
4-5 - 4
5 - 0
6 - 0

GRIEVANCES BY DEPARTMENT



GRIEVANCE CASES PER LEVEL RESOLVED
DURING FISCAL YEAR 2008-2009

STEP 2		
IMMEDIATE SUPERVISOR	CASES: 5	EMPLOYEES: 5

<u>Employees</u>	<u>Issues</u>	<u>Department</u>
B.K.	3-Day Suspension	Human Services/JJS
G.J.	Co-Worker Complaint	Human Services/JJS
H.D.	Promotion	Corrections/AP&P
M.B.	5-Day Suspension	Human Services/ORS
T.T.	5-Day Suspension	Human Services/JJS

STEP 3		
DIVISION/AGENCY DIRECTOR	CASES: 8	EMPLOYEES: 8

<u>Employees</u>	<u>Issues</u>	<u>Department</u>
A.L.L.	Transfer	Health/HSI
B.B.	Written Reprimand	Human Services/JJS
E.V.B.	3-Day Suspension	Health/Reimbursement
H.G.	1. Performance Evaluation 2. Retaliation	Public Safety/UHP
L.J.	Written Warning	Human Services/ORS
L.W.	3-Day Suspension	Human Services/DCFS
S.K.	Written Reprimand	Corrections/DIO
S.C.T.	Suspension	Human Services/USDC

STEP 4		
DEPARTMENT HEAD	CASES: 6	EMPLOYEES: 6

<u>Employees</u>	<u>Issues</u>	<u>Department</u>
A.C.	1. Salary (ASI) 2. Classification	Corrections/DIO
B.W.D.	Salary Equity	Corrections/DIO
C.W.S.	Transfer	Corrections/DIO
J.G.	Termination	Rehabilitation
K.D.	Promotion	Corrections/Programming
R.P.	Administrative Actions	Corrections/AP&P

MEDIATION/JURISDICTIONAL FORUM		
BETWEEN STEPS 4 AND 5	CASES: 31	EMPLOYEES: 31

<u>Employees</u>	<u>Issues</u>	<u>Department</u>
A.B.	Dismissal	Human Services/ORS
A.A.	Demotion	Workforce Services
B.N.	Dismissal	Corrections/UCI
B.J.	Promotion	Corrections/DIO
B.B.	1. Performance Evaluation 2. Workplace Harassment	Tax Commission
B.S.L.	Dismissal	Public Safety/UHP
C.T.	Salary Equity	Corrections/AP&P
C.O.K.	Abandonment of Position	Workforce Services
C.V.	Promotion	Corrections/DIO
C.K.	Suspension	Corrections/DIO
E.C.	Dismissal	Corrections/AP&P

<u>Employee</u>	<u>Issue</u>	<u>Department</u>
F.W.R.	Dismissal	Rehabilitation
F.R.A.	Personnel Rule Violation	Transportation
G.D.	Written Reprimand	Rehabilitation
G.J.	Dismissal	Transportation
G.E.	Demotion	Administrative Services/Finance
H.K.	Dismissal	Corrections/AP&P
H.R.	Promotion	Corrections/AP&P
J.D.	Dismissal	Corrections/Clinical Services
J.M.	Dismissal	Health/Health Systems Improvement
K.L.	Dismissal	Human Services/USH
M.B.	Dismissal	Human Services/USH
M.L.	Salary (Contract)	Corrections/DIO
M.K.	Dismissal	Workforce Services/Region I
N.M.	Dismissal	Corrections/Programming
N.L.M.	Dismissal	Human Services/USH
N.R.J.	Dismissal	Corrections/DIO
W.P.I	Dismissal	Transportation
W.C.	Demotion	Public Safety/UHP
W.B.	1. Salary (Policy Violation) 2. Classification	Corrections/DIO
W.C.	Dismissal	Workforce Services/Unemployment Insurance

STEP 5**EVIDENTIARY HEARING CASES: 3****EMPLOYEES: 3**

<u>Employee</u>	<u>Issues</u>	<u>Department</u>
Emalee Gonsalves	Demotion	Administrative Services/Finance
Bret R. Ogilvie	Dismissal	Human Services/ORS
JoeLean VonSteinmann	Dismissal	Human Services/DCFS

Note: In addition to these three cases resolved at Step 5 during Fiscal Year 2008-2009, the CSRB held an additional Step 5 hearing in the following case. This case was heard at Step 5, but not resolved during Fiscal Year 2008-2009, because the final decision was either issued after June 30, 2009, resolved at Step 6 or still on appeal to Step 6.

<u>Employee</u>	<u>Issue</u>	<u>Department</u>	<u>Decision Issued</u>	<u>Status</u>
Brendon Grames	Dismissal	Corrections	October 8, 2008	Appealed to Step 6

STEP 6**Appellate Review/Board Cases: 4****Employees: 4**

<u>Employee</u>	<u>Issue</u>	<u>Department/Division</u>
John M. Duran	Dismissal	Technology Services
Christine L. Facemyer	Dismissal	Corrections/AP&P
Nathan E. Hansen	Dismissal	Corrections/DIO
Rick J. Nichols	Suspension	Corrections/DIO

Note: An additional Step 6 hearing was held in the *Grames v. Corrections* case in June 2009. Because the Step 6 decision was not issued until September 2009, it will be captured in next year's annual report as being resolved in Fiscal Year 2009-2010.

**JURISDICTIONAL HEARINGS AND
ADMINISTRATIVE REVIEWS OF THE FILE
CONDUCTED DURING FISCAL YEAR 2007-2008**

JURISDICTIONAL HEARINGS:

A jurisdictional hearing is a formal adjudication conducted according to the Utah Administrative Procedures Act. These hearings are held at the request of employees, agency management, or at the initiative of the CSRB administrator. Jurisdictional hearings address the four issues of: timeliness, direct harm, standing and eligibility to advance issues and remedies to the evidentiary/step 5 level, according to *Utah Code*, §67-19a-403(2)(b)(i).

EMPLOYEE/CASE NO.	ISSUE	DEPARTMENT
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None Held

ADMINISTRATIVE REVIEWS OF THE FILE:

An administrative review of the file is an informal adjudication under the Utah Administrative Procedures Act. The contents of the CSRB's case files are reviewed and a written legal decision is issued. The decision is based upon a consideration of all documents contained in the CSRB's file. These reviews are conducted according to *Utah Code*, §67-19a-403(2)(b)(ii).

EMPLOYEE/DATE ISSUED	ISSUE	DEPARTMENT/CASE NUMBER
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Beverly Beitel June 2009	Subject Matter	Tax Commission/J.H. 182
Todd Carter September 2008	Timeliness	Corrections/ J.H. 178
Robert A. Franson April 2009	Standing	Transportation/J.H. 181
Margarita Juarez April 2009	Standing	Health/J.H. 180
Lorrie Merriam September 2008	Subject Matter	Corrections/J.H. 179
Brent Wonnacott August 2008	Subject Matter	Corrections/J.H. 177

**JUDICIAL REVIEW BY THE COURTS
CASES DECIDED DURING FISCAL YEAR 2008-2009**

1. *Lorin Blauer, Grievant, v. Utah Department of Workforce Services, Agency,*
CSRB Case No. 28 CSRB/H.O. 408

Designation in the Utah Court of Appeals:

Lorin Blauer, Petitioner vs. Utah Department of Workforce Services, and Utah Career Service Review Board, Agencies and Respondents
Appellate Case No. 20061177-CA

Synopsis: Grievant originally appealed to the CSRB the Department's final decision assigning Grievant to perform unemployment hearings on a full-time basis. The CSRB's Administrator originally dismissed Grievant's appeal concluding that this assignment did not constitute a demotion. Thereafter, Grievant requested the Administrator reconsider his decision. In this request for reconsideration, Grievant also raised additional issues not explicitly set forth in his original appeal. The Administrator denied Grievant's request for reconsideration. Grievant then appealed the Administrator's jurisdictional decision to the Utah State District Court. The District Court upheld the CSRB Administrator's jurisdictional determination that Grievant had not been demoted, but remanded the additional issues to the CSRB for consideration. Grievant then appealed the District Court's decision to the Utah Court of Appeals. Thereafter, the Utah Court of Appeals issued its decision affirming the District Court judge's decision regarding Grievant's alleged demotion and remand.

After remand, the Department filed a motion to dismiss Grievant's remaining claims. This motion was granted by the CSRB Hearing Officer. Grievant then appealed the CSRB Hearing Officer's decision to the Utah Court of Appeals. On March 13, 2008, the Utah Court of Appeals issued its memorandum decision on Grievant's appeal and held that the CSRB erred in dismissing Grievant's remaining claims. After reviewing the merits of the case, the Utah Court of Appeals stated: "We reverse the CSRB's dismissal of [Grievant's] . . . claims on jurisdictional grounds and remand the case to the CSRB for a hearing on the merits." A hearing in this matter is currently set for November 18-19, 2009.

2. *Julie Ann Olson, Grievant v. Utah Department of Health, Agency*
Case No. J.H. 163 (2007)

Designation in Third Judicial District Court:

Julie Ann Olson, Plaintiff/Petitioner, vs. Utah Department of Health, Defendant/Respondent.
Civil No. 070910001

Synopsis: Grievant originally appealed to the CSRB a Department of Health imposed demotion that resulted in a reduction in Grievant's actual wage and a reassignment to a position having a lower maximum salary range. After a prehearing conference was held in this matter, but before an evidentiary hearing had occurred, the Department retroactively restored Grievant's prior salary, but kept her position reassignment in place. After retroactively restoring Grievant's wage and salary, the Department moved to dismiss Grievant's grievance before the CSRB, arguing that absent an actual

reduction in wage or salary, Grievant had not been demoted as defined by statute, thus stripping the CSRB of jurisdiction to review or adjudicate her claims. In a jurisdictional decision dated June 7, 2007, the CSRB Administrator dismissed Grievant's appeal to the CSRB concluding that Grievant had not been demoted as that term is defined by State law. Grievant then appealed this decision to the Utah State District Court.

Decision: On ???, the District Court entered a decision overturning the CSRB's jurisdictional decision. In reaching this decision, the District Court concluded: "In the instant case, it is undisputed Ms. Olson was transferred as part of the 'disciplinary action of demotion.'" This case is now on appeal to the Utah Court of Appeals. (See Cases Pending During fiscal Year 2008-2009, page 13.)

3. *Brent N. Hughes, Grievant and Respondent, v. Utah Department of Human Services, Agency and Appellant,* Case No. 8 CSRB 80

Designation in the Utah Court of Appeals:

***Brent Hughes, Grievant/Appellee, vs. Department of Human Services, State of Utah, Agency/Appellants,* Appellate Case No. 20080426**

Synopsis: Grievant originally filed an appeal with the CSRB regarding his termination from employment for running for public office. The Department's termination was based upon violations of the Federal Hatch Act. A Step 5 evidentiary hearing in this matter was held wherein the CSRB Hearing Officer overturned the Department's decision to terminate Grievant's employment. The Department then appealed the Hearing Officer's decision to the full CSRB Board. On June 17, 2005, the full CSRB Board upheld the Hearing Officer's decision. The Board's Step 6 decision was then appealed to the Utah Court of Appeals. By their own certification, the Utah Court of Appeals transferred the case to the Utah Supreme Court. The Utah Supreme Court overturned the CSRB's decision and remanded the case to the CSRB for determinations regarding due process that were not fully addressed during the initial evidentiary hearing. On remand, the CSRB found that the Department's actions in terminating Grievant violated due process consistency concerns and again ordered Grievant reinstated. The Department again appealed the CSRB's decision to the Utah Court of Appeals.

Decision: On appeal to the Utah Court of Appeals for a second time, the parties settled this matter negating the necessity for the Utah Court of Appeals reaching a decision.

**JUDICIAL REVIEW BY THE COURTS
CASES PENDING DURING FISCAL YEAR 2008-2009**

1. *Julie Ann Olson, Grievant v. Utah Department of Health, Agency,* Case No. J.H. 163

Designation in the Utah Court of Appeals:

***Julie Ann Olson, Plaintiff and Appellee, v. Utah Department of Health, Defendant and Appellant.* Appellant Case 20080937-CA**

2. *Blitch Shuman, Grievant v. Utah Department of Corrections, Agency*, CSRB Case No. J.H. 164

Designation in Third Judicial District Court:

Hanford "Blitch" Shuman, III, Plaintiff, v. The State of Utah Department of Corrections, the Career Service Review Board and the Department of Human Resource Management, Defendant, Civil No. 070911287

3. *Brenda Bryant, Grievant v. Utah Department of Health, Agency*, CSRB Case No. J.H. 167

Designation in Third Judicial District Court:

Brenda A. Bryant, Plaintiff, v. The State of Utah Department of Health; the Career Service Review Board; the Department of Human Resource Management; David N. Sundwall, individually and in his capacity as the Executive Director of the Department of Health; and Michael Hales, individually, and in his capacity as the Director of the Division of Health Care Financing, and John and Mary Jane Does 1 through 10, Defendants, Civil Case No. 070916205 AA

4. *Carrie Worthen, Grievant, v. Utah Department of Human Services, Agency*, CSRB Case No. 170

Nancy Valdez, Grievant, v. Utah Department of Human Services, Agency, CSRB Case No. 173

Designation in Third Judicial District Court:

Carrie Worthen and Nancy Valdez, Plaintiffs, vs. Utah Department of Human Services and the Career Service Review Board, Civil Case No. 080901915

5. *John M. Duran, Grievant, v. Utah Department of Technology Services, Agency*, 10 CSRB 94

Designation in the Utah Court of Appeals:

John M. Duran, Petitioner, v. Department of Technology Services, Career Service Review Board, and John and Jane Does 1-20 inclusive, Respondents, Appellate Case No. 20090252-CA

**STATISTICAL SUMMARY OF ACTIVITIES
FOR FISCAL YEAR 2008-2009**

GENERAL:

Grievance cases resolved in the CSRB forum:	57
Career service employees participating in the grievance process:	55
Evidentiary/step 5 hearings conducted:	4
Evidentiary/step 5 hearings decisions issued:	4
Appellate/step 6 hearings conducted:	4
Appellate/step 6 decisions issued:	4
Jurisdictional hearings conducted/decisions issued:	0
Administrative reviews of the file conducted/issued:	6
Cases resolved, mediated or otherwise settled following an appeal to Step 5:	4

CSRB BOARD CHAIRPERSON AND BOARD MEMBERS:

Step 6 decisions issued:	4
Orders/Rulings issued:	4

CSRB ADMINISTRATOR:

Prehearing/status conferences conducted:	58
Prehearing, status conference summaries/orders issued:	40
Other orders issued:	38
Conciliation conferences held:	4
Jurisdictional decisions issued:	6

CSRB HEARING OFFICERS/PRESIDING OFFICERS:

Step 5 hearing decisions issued:	4
Prehearing conferences and motion conferences held:	12
Prehearing conference orders issued:	9
Orders Issued by CSRB Hearing Officers:	9

THE COURTS:

CSRB decisions issued by the Utah Court of Appeals:	2
CSRB cases currently pending before the Utah Court of Appeals:	2
CSRB decisions issued by Utah District Courts:	1
CSRB cases currently pending before the Utah District Courts:	3

**ANNUAL GRIEVANCE CASES COMPARED
FOR TEN YEAR PERIOD
FISCAL YEARS 1999-2000 THROUGH 2008-2009**

FISCAL YEAR	TOTAL GRIEVANCES	JURISDICTIONAL DECISIONS	STEP 5 HEARINGS	STEP 6 HEARINGS
99-00	103	3	5	1
00-01	116	6	10	1
01-02	78	5	2	1
02-03	91	9	15	6
03-04	129	12	9	7
04-05	122	15	7	7
05-06	83	6	10	2
06-07	70	9	5	6
07-08	66	14	11	3
08-09	57	6	4	4

